

CITY/COUNTY LANDFILL

FIRST AMENDED JOINT POWERS AGREEMENT

THIS FIRST AMENDED JOINT POWERS AGREEMENT ("Agreement"), is entered into pursuant to the Joint Powers Agreements Act, §§11-1-1 through 11-1-7, NMSA 1978 (the "JPA Act"), by and between the City of Santa Fe, New Mexico (the "City"), and the County of Santa Fe, New Mexico (the "County"), as of the Effective Date (as defined below).

RECITALS

A. Pursuant to Sections 3-48-1 through 3-48-7 NMSA 1978, the City has the power and authority to dispose of solid waste.

B. Pursuant to Sections 4-56-1 through 4-56-3 NMSA 1978, the County has the power and authority to dispose of solid waste.

C. It is in the best interests of the citizens of the City and the County that the City and the County jointly undertake to exercise their powers to dispose of solid waste, and thereby provide a more efficient and cost-effective method of solid waste disposal to City and County citizens.

D. Therefore, the City and the County desire to purchase, permit, construct, operate and maintain a joint regional solid waste disposal facility (the "Facility"), and to establish and be part of a solid waste management agency that will engage in planning, management, and operation, including, maintenance, expansion and closure, as appropriate, of the Facility.

E. The City and the County desire to equally divide the tasks necessary to acquire the real property on which the Facility will be located (the "Facility Site") and to obtain the appropriate permits for the Facility from the relevant public agencies and authorities.

1 F. The City and the County will jointly employ a solid waste director (the
2 "Director"); and the position of the Director, including the responsibilities of the Director,
3 shall be as set forth in this Agreement.

4 G. Accordingly, the City, through its lawful agent, the Director, has contracted
5 with an independent contractor ("Contractor") to prepare and submit a permit application
6 for the Facility (the "Application") to the New Mexico Environment Department
7 ("NMED"); and the Application has been prepared and submitted to NMED.

8 H. The County has acquired the Facility Site, which is located in the County,
9 and which is more particularly described on Exhibit A to this Agreement.

10 I. Each of the City and the County is a "public agency" as that term is
11 defined in the JPA Act.

12 J. The City has acquired a permit issued by the Environment Department of
13 the state of New Mexico for the Facility which permit is more particularly described in
14 Exhibit B attached to this agreement.

15 AGREEMENTS

16 NOW, THEREFORE, in consideration of the mutual covenants and agreements
17 contained in this Agreement and for other good and valuable consideration, the receipt
18 and sufficiency of which are hereby acknowledged, the City and the County agree:

19 I. The Agency.

20 1.01. Establishment of the Agency. The City and the County establish the Santa
21 Fe Solid Waste Management Agency (the "Agency"), and delegate to the Agency the
22 power to plan for, operate, construct, maintain, repair, replace, expand, or close the
23 Facility and such other powers as set forth herein, subject to the terms of this Agreement
24 and subject to applicable law. The Agency shall be a public entity separate from the
25 parties to this agreement.

1 1.02. Agency Board of Directors. The Agency shall be managed by a Board of
2 Directors (the "Board") comprised as follows:

3 (a) Four members, each of whom shall be a City Councilor from a
4 different elective district within the City, shall be appointed by the City's Mayor with the
5 approval of the City Council, and each of which City members shall serve for such period
6 as may be determined from time to time by the Mayor with the approval of the City
7 Council; and

8 (b) Four members, each of whom shall be a County commissioner,
9 appointed and approved by the Board of County Commissioners, and each of which
10 County members shall serve for such period as may be determined and approved from
11 time to time by the Board of County Commissioners.

12 (c) The Board shall elect a Chairman, Vice-Chairman, and Clerk for
13 the purposes of holding meetings, doing business, and executing documents as required
14 and consistent with the terms of this Agreement.

15 1.03. Powers of the Board. Each of the City and the County delegates the
16 following powers and authority to the Agency and the Board, as the managing authority
17 of the Agency, subject to the following limitations:

18 (a) Rules and Procedures. The power to adopt and implement rules
19 and procedures with respect to the operation of the Agency, the Board, and the Facility,
20 which rules and procedures must first be approved by each of the City and the County
21 prior to being implemented;

22 (b) 100-Year Plan. The power to recommend and implement a 100-
23 year plan for the provision of joint City/County regional solid waste disposal services for
24 the City and County, which plan shall not be formally adopted or implemented unless and
25 until it has been approved by each of the City and the County.

1 (c) Annual Budget. The power to recommend an annual budget for
2 the Agency and the Facility, which budget shall be finalized for recommendation after a
3 public hearing, and which budget shall not be formally adopted or implemented unless
4 and until it is approved by each of the City and the County. However, the City and the
5 County shall have only the power to approve or disapprove the annual budget of the
6 Agency; and shall not have the power to modify the annual budget or approve the budget
7 subject to any conditions. If, for any reason, the Agency fails to have an approved annual
8 budget for a fiscal Agency year as of the first day of that year, the annual budget for the
9 prior fiscal Agency year shall be effective for the subsequent fiscal year until such time
10 as an annual budget is adopted and approved for that subsequent fiscal year.

11 (d) Operation of Facility. The power to operate, maintain, repair,
12 replace, expand, and close, as appropriate, the Facility in conformity with the relevant,
13 adopted annual budget, which power shall include, without limitation, the powers to
14 employ personnel, enter into contracts, amend, restate, modify or rescind applications and
15 other documents filed with respect to the Facility with a public agency or entity, and
16 perform any other function necessary for, and incidental to, the operation, maintenance,
17 repair, replacement, expansion, and closure of the Facility; provided, however, that the
18 Facility shall not be expanded or closed, and no actions with respect to the expansion or
19 closure of the Facility shall be taken without the prior approval of each of the City and
20 the County.

21 (e) Financing. The power to apply for grants, loans, financial
22 guarantees, and other financial assistance from private or public, including state and
23 federal, agencies, institutions and entities; provided, however, that the Agency shall not
24 obligate itself on a loan or encumber any of the Agency's or the Facility's property or
25 assets unless and until each of the governing bodies of the City and the County approves

1 such loan or encumbrance. The Agency shall be empowered to adopt revenue bond
2 ordinances in accordance with § 11-1-7 N.M. Stat. Ann. (Michie 1978) and section 3.03
3 of this agreement so long as any such revenue bond ordinance is duly ratified by
4 ordinance by the governing bodies of each of the City and County.

5 (f) Fees. The power to collect from the City, the County, and the
6 residents of the City and the County, solid waste disposal fees as may be necessary or
7 appropriate to operate, maintain, repair, replace, expand or close, as appropriate, the
8 Facility, which fees shall be pursuant to a schedule of fees adopted by the Board after a
9 public hearing and the powers to pledge the fees and other income of the Agency and the
10 Board to the payment of loans, obligations and revenue bonds.

11 (g) Enforcement. The power to use any and all legally delegable
12 remedies provided under state statute, City ordinance, or County code for the enforcement
13 of actions by and collection of monies for Agency operations.

14 1.04 Meetings of the Board. The Board shall have at least one regularly
15 scheduled meeting per calendar quarter, unless more or less frequent meetings are set by
16 the Board pursuant to Agency rules and procedures adopted by the Board in accordance
17 with Section 1.03(a). A quorum shall be deemed to be present at each Board meeting if
18 a majority of Board members is present. No action shall be taken at any meeting of the
19 Board unless a quorum is present. A simple majority of Board members who are present
20 at a duly called meeting of the Board at which a quorum is present shall act for the Board
21 with respect to all matters brought before the Board at that meeting.

22 1.05. Tie Votes. If the Board reaches a tie vote at any duly called meeting of
23 the Board at which a quorum is present on any action item within the authority of the
24 Board, as provided by this Agreement, then the matter shall be submitted to arbitration
25 in Santa Fe County, New Mexico, pursuant to the New Mexico Arbitration Act, §§44-7-1

1 through 44-7-22 NMSA 1978, and the rules promulgated under that Act, so that the
2 matter is finally decided within sixty (60) days of the date of the Board meeting at which
3 the tie vote occurs. At any time during such sixty (60) day period, the Board may
4 convene a special meeting of the Board for purposes of resolving the issue that caused the
5 tie vote.

6 Arbitration pursuant to this Section 1.05 shall be before a panel of three
7 (3) arbitrators, one (1) selected by members of the Board appointed by the City, one (1)
8 selected by members of the Board appointed by the County, and the third selected by the
9 other two arbitrators. Any award granted or determination made by two of the three
10 arbitrators shall be the final award and decision of the panel and shall be binding upon
11 the Agency, the Board and the parties, to the extent provided in that decision. Costs
12 associated with arbitration shall be deemed to be operating costs of the Agency payable
13 out of the Agency budget. However, if either of the parties incurs costs associated with
14 an arbitration proceeding, such as legal costs, that party shall be solely responsible for the
15 costs incurred by it unless otherwise determined by the relevant arbitration panel.

16 2. Operational Structure for the Facility.

17 2.01. Staff Advisory Committee. The City and the County and the Board shall
18 establish a five-member staff advisory committee (the "Staff Committee") which shall be
19 comprised of the Director of Finance for the City, the Director of Finance for the County,
20 the Director of the City's Public Works or Utilities Department, as appropriate, the
21 Director of the County's Public Works or Utilities Department, as appropriate, and the
22 Director. The Director shall serve as chair of the Staff Committee. The Staff Committee
23 shall meet at least once a calendar quarter prior to the regularly scheduled meeting of the
24 Board; and shall make recommendations to the Board on the following:

- 25 (a) Compliance by the Facility with all applicable laws, rules, and

1 regulations, including the conditions imposed under the applicable NMED permit for the
2 Facility;

3 (b) Costs associated with the Facility and preparation of the Agency's
4 annual budget;

5 (c) Any expansion or closure of the Facility; and

6 (d) Such other matters as may be requested from time to time by the
7 Board.

8 2.02. Citizens Advisory Committee. Within ninety (90) days of the Effective
9 Date, each of the City and the County shall appoint two (2) citizens to a five-member
10 citizens advisory committee (the "Citizens Committee"); and the Director shall serve as
11 chair of the Committee. The Citizens Committee shall meet at least once a calendar
12 quarter prior to the regularly scheduled meeting of the Board; and shall make
13 recommendations to the Board of the following:

14 (a) Compliance by the Facility with all applicable laws, rules, and
15 regulations, including the conditions imposed under the applicable NMED permit for the
16 Facility;

17 (b) Costs associated with the Facility and preparation of the Agency's
18 annual budget;

19 (c) Any expansion or closure of the Facility; and

20 (d) Such other matters as may be requested from time to time by the
21 Board.

22 2.03. Use of Facility. Unless otherwise determined by the Board, with the prior
23 approval and consent of the City and the County, only waste generated within the
24 geographic limits of Santa Fe County may be disposed at the Facility by persons operating
25 under express agreements with the Agency.

1 3. Funding.

2 3.01. Start-Up Costs. Each of the City and the County shall pay one-half of the
3 amounts required to pay the capital and operating costs associated with the acquisition of,
4 permitting for, construction of, and commencement of operations at, the Facility (the
5 "Start-Up Costs"). What constitutes "Start-Up Costs" with respect to the Facility shall be
6 mutually determined by the parties in accordance with generally accepted accounting
7 principles, consistently applied ("GAAP"). The parties agree that Start-Up costs include,
8 without limitation, the costs associated with acquiring the Facility Site, acquiring property
9 necessary to construct the Facility, permitting the facility, including related consultants
10 costs, and the initial monies necessary to operate the Facility prior to the collection of fees
11 from Facility users. Each party shall pay its share of Start-Up Costs when and as the
12 same become due or, if the Agency has an adopted annual budget, in accordance with the
13 schedule set forth in that budget.

14 3.02. Operating Costs and Debt Service. In accordance with the approved annual
15 budget for the Agency, the Agency shall expend the revenues (the "Fee Revenues")
16 generated by the collection of fees imposed on the City, the County and other users
17 provided for in section 2.03 supra, for the use of the Facility by each to pay for the
18 Agency's operating costs, any expenses and costs associated with service of the Agency's
19 debt, and all capital costs other than Start-Up Costs. If, for any reason, the Fee Revenues
20 are insufficient to pay the costs associated with the Agency's operations, debt service, and
21 capital improvements (other than those covered by Start-Up Costs), the Board promptly
22 shall notify the City and the County; and each of the City and the County hereby agree
23 to meet, negotiate in good faith and take such steps as may be reasonable and prudent in
24 light of existing circumstances to insure that any deficits accumulated or incurred by the
25 Agency are not allowed to impair the operation, integrity or creditworthiness of the

Agency. However, it is hereby agreed and acknowledged that any debts of the Agency shall not be the debts of the parties hereto and that nothing in this agreement is to be construed as creating an obligation or debt of a public entity which is or may be deemed a violation of New Mexico Law. The terms "operating costs", "debt service costs", and "capital costs" have the meanings assigned to them under GAAP.

3.03. Revenue Bonds. Without limiting the generality of Sections 3.01 and 3.02, funds required for the development, operation, closure and post-closure of the Facility may be generated by the Agency through the issuance of revenue Bonds as authorized by Section 11-1-7 NMSA 1978, or any successor or replacement statute. Revenue Bonds shall be issued pursuant to an ordinance adopted by the Board in accordance with the most restrictive procedures prescribed by state law for adopting revenue bond ordinances by the City or County and which ordinance shall be ratified by ordinance by the governing body of each of the City and County.

4. Facility Director.

4.01. Director of the Facility. The Director shall be contracted by the Board pursuant to their duly adopted personnel policy. The salary of, and any employment-related benefits for, the Director will be included in the annual budget for the Agency and will be paid, or provided for, by the Agency. The Director shall remain employed by the Agency at the pleasure of the Board. In the event that the Director is absent, ill, or otherwise unable to fulfill his duties for a protracted period of time, the Board shall select a designee to perform the duties of the Director on an interim basis.

4.02. Duties of Director. The duties of the Director shall include, without limitation:

(a) the management and supervision of the operations of the Facility in accordance with the adopted annual budget of the Agency and in compliance with all

1 applicable laws, rules, and regulations, including the conditions imposed under the
2 applicable NMED permit for the Facility;

3 (b) the negotiation, execution and delivery of agreements, contracts,
4 instruments and other documents in furtherance of the operations of the Facility, subject
5 to the adopted annual budget of the Agency and all applicable laws, rules, and regulations,
6 including the conditions imposed under the applicable NMED permit for the Facility;

7 (c) the authority to hire and terminate such personnel as may be
8 required or appropriate to operate and maintain the Facility, subject to the adopted annual
9 budget and personnel rules and administrative manual or procedures adopted by the
10 Agency as well as all applicable laws, rules, and regulations, including the conditions
11 imposed under the applicable NMED permit for the Facility; and

12 (d) the insurance of compliance by the Facility with all applicable laws,
13 rules, and regulations, including the conditions imposed under the applicable NMED
14 permit for the Facility.

15 5. Property.

16 5.01. Property other than the Facility Site. In accordance with its approved
17 annual budget, the Agency may acquire real property and personal property other than the
18 Facility Site and the Facility to implement this Agreement and to operate the Facility.
19 Title to all real and personal property acquired with respect to the Facility, including the
20 Facility Site and the NMED permit for the Facility ("Facility Property"), shall be vested
21 in the Agency. Each of the City, the County, and the Agency shall take all such actions,
22 and shall execute and deliver all such agreements, instruments, and other documents as
23 may be necessary or appropriate to transfer title to all Facility Property to the Agency.

24 5.02. Sale of Facility Property. Upon termination of this Agreement or the
25 conclusion of closure and post-closure activities for the Facility, whichever first occurs,

1 the City and the County delegate to the Board the power and authority to cause the sale
2 of all Facility Property, other than the Facility Site (unless such sale is pursuant to a
3 termination of this Agreement occasioned by the sale of the Facility and its operations),
4 and shall use the proceeds of such sale to wind up the Agency's operations and affairs.
5 Any sale proceeds remaining after the winding up of the Agency's operations and affairs
6 shall be paid to the City and to the County in equal portions unless either of the County
7 or the City failed to make payments required under Article 3, in which case, payment of
8 sale proceeds shall be in proportion to the amounts contributed by the parties under
9 Article 3. The Board may, in its sole judgment and discretion, make in-kind distributions
10 to the parties in lieu of effecting a property sale and distributing the proceeds; and in-kind
11 payments shall be distributed to the City and to the County in equal portions unless either
12 of the County or the City failed to make payments required under Article 3, in which
13 case, such distribution shall be in proportion to the amounts contributed by the parties
14 under Article 3.

15 6. NMED Permit; Financial Assurances; Liability for Facility. The City, through
16 its lawful agent, the Director, has contracted with the Contractor to prepare and submit
17 a permit Application for the Facility to the NMED; and the Application has been prepared
18 and submitted to NMED. Each of the City and the County will provide one-half of any
19 financial assurance required with respect to the Facility to obtain a Facility permit from
20 NMED or otherwise to comply with applicable laws, rules and regulations. The Agency
21 shall be liable for all matters and obligations concerning the Facility; provided, however,
22 that if liability arises with respect to the Facility that reasonably can be traced to the use
23 of the Facility by either the City or the County or the respective licensees of either the
24 City or the County, then the user that caused, or whose licensees caused, the liability shall
25 be obligated to pay such liability as and to the extent the Agency is unable to pay such

1 liability. The City and the County agree that the Permit may be amended, as appropriate,
2 to reflect the division between the parties of the obligation to provide financial assurance
3 and of liability with respect to the Facility and Facility Site set forth in this Article 6.

4 7. Term and Termination.

5 7.01. Term. The date on which this Agreement shall be effective (the "Effective
6 Date") shall be the date on which this Agreement is approved by the New Mexico
7 Department of Finance and Administration. This Agreement shall be effective from the
8 Effective Date through the date of termination, as provided in Section 7.02.

9 7.02. Termination.

10 (a) By One Party. Each of the City and the County may terminate this
11 Agreement by delivering notice to the other party and to the Agency of its desire to
12 terminate this Agreement. The Board shall announce its receipt of a termination notice
13 at the regularly scheduled, public meeting of the Board following the day the Board
14 receives the termination notice; and this Agreement will terminate no earlier than eighteen
15 months after the date that the Board notice is announced at a meeting of the Board.
16 Each party shall perform its respective obligations under this Agreement through the date
17 of termination, and thereafter to the extent such obligations properly arise or accrue during
18 the effective period of this Agreement. The terminating party shall have the right to use
19 the Facility for a period of up to five years from the date of termination. Unless
20 otherwise agreed by the City and the County, such post termination use shall be on the
21 terms and conditions set forth in this Agreement. During all times that the Facility is
22 being used jointly by the parties, whether or not this Agreement has terminated, the
23 Board, the Staff Committee and the Citizens Committee shall continue to function as
24 provided in this Agreement.

25 (b) By Mutual Agreement of the Parties. The parties, by mutual

1 written agreement executed on behalf of each party, may terminate this Agreement on
2 such terms and subject to such conditions as provided in the mutual written agreement.

3 (c) **Retention of Fiduciary Responsibilities.** Each of the parties
4 acknowledges and accepts that it has a fiduciary responsibility with respect to the
5 operation of the Facility and the Agency.

6 7.03 Limitation on Termination. Notwithstanding the provisions in sections
7 7.01 and 7.02, the parties shall not terminate this Agreement so long as any revenue bonds
8 issued under this Agreement by the Agency are outstanding, i.e. so long as there has not
9 been full payment or defeasance of such revenue bonds.

10 8. General Provisions.

11 8.01. Review. This Agreement and the operation of the Agency and the Facility
12 shall be reviewed and evaluated jointly by the City and the County on every fifth
13 anniversary of the Effective Date or as deemed necessary by the Board upon the
14 recommendation of the Staff Committee. The review and evaluation may include
15 deliberations concerning the viability of establishing a Solid Waste Authority pursuant to
16 the Solid Waste Authority Act, §§74-10-1 through 74-10-100, NMSA 1978, or any
17 successor or replacement statute.

18 8.02. Records and Audit. As provided in Section 11-1-4 NMSA 1978, the
19 Agency shall be strictly accountable for all receipts and disbursements, and shall maintain
20 adequate, complete and correct records and statements pertaining to receipts,
21 disbursements, and other financial matters pertaining to the Facility and the Agency, in
22 accordance with GAAP. Each year, the Board shall cause an annual audit of the Agency
23 and the Facility to be performed by an independent certified public accountant; and the
24 audit shall be provided to each of the City and the County and shall be made available
25 to the public.

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1 Yolanda Y. Vigil
2 Yolanda Y. Vigil, City Clerk

3 APPROVED AS TO FORM:

4 Mark Basham
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6 Mark Basham, City Attorney

7 County of Santa Fe, New Mexico,

8
9 By: Richard D. Anaya
County Commissioner
10 Title: Chairman
11 Date: 10-23-96

12 ATTEST:
13 [Signature]
14 County Clerk 10-25-96



15 APPROVED AS TO FORM:

16 Steve Kopelman
17 Steve Kopelman, County Attorney

18 THIS AGREEMENT HAS BEEN APPROVED BY:

19 State of New Mexico

20 Department of Finance Administration

21 By: [Signature] 11/14/96
22 Date: 11/18/96

23 Landfill.fin/pad/1002

Reviewed by: [Signature] S.F. County
Date: 11-07-96
DFA-Local Government Division

Reviewed by: [Signature] City of
Date: 11/7/96
DFA-Local Government Division

